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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,602

11/21/2003

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EXAMINER

ROBERTS, LEZAH

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

12/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/719,602	<b>Applicant(s)</b> HOLME ET AL.	
	<b>Examiner</b> Lezah W. Roberts	<b>Art Unit</b> 1614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16, 18-30, 33, 35, 36 and 39-46 is/are pending in the application.
- 4a) Of the above claim(s) 15, 16, 18, 19, 26-28 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 20-25, 29, 30, 33, 35 and 39-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The Office Action is in Response the Request for Continued Examination filed September 28, 2007. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### **Claim Rejections - 35 USC § 102 - Anticipation (New Rejection)**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1) Claims 1-14, 25, 33, 35 and 39-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Day et al. (WO 01/39606).

Day et al. disclose chewing gum compositions comprising poly phosphate particles. The polyphosphates include tetrapolyphosphate and hexametaphosphate, encompassing claim 3. The polyphosphate are sodium, potassium and hydrogen compounds (page 4, lines 12-35). The compounds comprise 0.1% to 50% of the compositions. Additional agents include softeners such as sodium and potassium stearate and comprise from 0.1% to 10% by weight of the chewing gum (page 8, lines 22-27). Whitening agents such as peroxides may also be added to the chewing gum compositions (page 11, lines 27-30). The gums may comprise coatings and the active

agents may be incorporated into the coatings, encompassing claims 39 and 40 (page 11, lines 35-40). The polyphosphate is added last and may or may not be encapsulated with cellulose polymers (page 14, products A-E). The reference anticipates the instant claims insofar as it discloses a chewing gum comprising a polyphosphate, an anionic surfactant and peroxide.

2) Claims 1, 9, 20-22, 24, 33, 39 and 42-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard (US 5,824,291).

Howard discloses chewing gums containing a teeth whitening agent. The whitening agents including sodium carbonate peroxyhydrate, which is a peroxide compound. The peroxyhydrate comprises 0.35% of the compositions (see Example I). The compositions may also comprise coatings, encompassing claim 39. Other components, such as plasticizers including sodium stearate and potassium stearate, are added to the chewing gums (see claims 10). The active ingredients are added last, encompassing claims 41-43. The reference anticipates the instant claims insofar as it discloses a chewing gum comprising an anionic surfactant and peroxide.

3) Claims 1, 2, 9, 13, 14, 20-22, 24, 33 and 41-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Miskewitz (US 5,693,334).

Miskewitz discloses chewing gums with dental health benefits. The compositions comprise a peroxygen compound including urea peroxide (col. 5, lines 34-45), and surfactants such as an anionic surfactant including sodium dioctyl sulfosuccinate,

sodium lauryl sulfate, sodium dodecylbenzenesulfonate, ammonium lignosulfonate, and the like (col. 6, lines 47-53). The peroxygen compound comprises 0.5% to 12% of the chewing gum product. The surfactant comprises 0 to 3% of the compositions (col. 3, lines 36-50). Other ingredients such as lecithin are incorporated into the chewing gum compositions (claim 45). It appears the gums of the instant claims were made similarly to that of those of the reference because the reference discloses the gum base was heated followed by the adding of the active ingredients as in the instant specification. Therefore the reference encompasses claims 41-43 (see Example III). The reference anticipates the instant claims insofar as it discloses a chewing gum comprising an anionic surfactant and peroxide.

**Claim Rejections - 35 USC § 103 – Obviousness (New Rejections)**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1) Claims 20-24, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. (WO 01/39606) in view of Sagel et al (6,582,708).

The primary reference, Day et al., is discussed above. The reference differs from the instant claims insofar as it does not disclose the amount of peroxide that may be used in the compositions or that the peroxide is encapsulated.

Sagel et al. disclose whitening compositions to whiten teeth. The compositions include peroxides ranging from 0.01 to 40% of the compositions (col. 5, lines 57-67). The peroxide may be encapsulated to improve stability (col. 1, lines 40-44). The reference differs from the instant claims insofar as it does not disclose the whitening compositions are chewing gums comprising polyphosphate or an anionic surfactant.

It would have been obvious to one of ordinary skill in the art to have encapsulated peroxide and have added the peroxide from 0.01 to 40% to the composition of the primary reference motivated by the desire to add an effective amount

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of whitening agent to the compositions as well as ensure stability of the peroxide, as disclosed by the secondary reference.

2) Claims 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. (WO 01/39606) in view of Cherukuri et al (4,980,178).

The primary reference, Day et al., is discussed above. The reference differs from the instant claims insofar as it does not disclose the polyphosphates in a center-filled gum.

Cherukuri et al. disclose center-filled gums may be used to deliver pharmaceutical components and depending on the form of the component, the release of the pharmaceutical may be controlled. The pharmaceuticals are incorporated into the liquid center of the gum in the desired form. (col. 15, lines 10-30). The reference differs from the instant claims insofar as it does not disclose the pharmaceutical components are peroxide, polyphosphate or an anionic surfactant.

It would have been obvious to one of ordinary skill in the art to have used center-filled gums to deliver the active ingredients of the primary reference motivated by the desire to be able to use the components in a form that facilitates the desired rate of delivery by having them enclosed in the center of the gum, as disclosed by the secondary reference.

Claims 1-14, 20-25, 29, 30, 33, 35 and 39-46 are rejected.

Claims 15-16, 18, 19, 26-28 and 36 are withdrawn.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lezah Roberts  
Patent Examiner  
Art Unit 1614



Frederick Krass  
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